

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Telephone Number Portability

)
)
) CC Docket No. 95-116
)

98-229

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PETITION FOR FORBEARANCE OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

In 1996 the Commission imposed upon all CMRS providers the requirement that they implement long term service provider number portability by June 30, 1999. The Commission concluded at the time that number portability between CMRS providers would foster increased competition by reducing potential entry barriers faced by recently-licensed PCS carriers. In the intervening months since the Commission's adoption of the Number Portability Report and Order, the CMRS market has continued on a path of dynamic growth, while the factual circumstances which would arguably justify number portability have been altered by the realities of the competitive CMRS market.

CTIA herein requests that the Commission forbear at this time from imposing service provider number portability requirements upon all CMRS providers under the Commission's Section 10 authority. Among other things, under Section 10 the Commission shall forbear from applying any regulation when doing so would be consistent with the public interest and would "promote competitive market conditions." The CTIA Board has directed CTIA to file this Petition because it has become clear that competition in the CMRS industry is being fostered today through increased network coverage and aggressive pricing of services, and that the availability of CMRS service provider number portability is not as critical to a CMRS carrier's success as is its network buildout and rate structure. Thus, in the interest of meeting the competitive demands of the marketplace, CMRS providers are seeking limited forbearance of their

obligations to provide number portability so they can devote their finite resources toward meeting the demands of a competitive market. Obviously, diverting resources away from the most critical competitive factors is not in the public interest. Therefore, CTIA requests that the Commission forbear from enforcing the June 30, 1999 implementation deadline for CMRS number portability at least until the five-year buildout period for PCS carriers has expired. At that time, should the Commission view it in the public interest, the Commission may once again consider all of the elements that may foster competition in the CMRS industry, including number portability.

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**PETITION FOR FORBEARANCE OF
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The Cellular Telecommunications Industry Association ("CTIA")¹ submits its Petition for Forbearance from CMRS number portability obligations in the above-captioned proceeding.

I. INTRODUCTION

In 1996, before PCS had been deployed in most markets, the Commission determined that number portability in the CMRS industry would foster increased competition among CMRS carriers and promote future competition between CMRS providers and wireline services.² The Commission reasoned that "number portability will facilitate the entry of new service providers,

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 at ¶¶ 154-160 (1996) ("Report and Order").

such as PCS and covered SMR providers, into CMRS markets currently dominated by cellular carriers, and thus provide incentives for incumbent cellular carriers to lower prices and increase service choice and quality."³ Therefore, the Commission required all CMRS providers in the top 100 MSAs, including both incumbents and new entrants, to implement service provider number portability by June 30, 1999.⁴

In adopting those requirements, the Commission was acting upon its belief that number portability would promote competition in the CMRS and wireline markets because it would remove the requirement that a customer change numbers when switching between carriers. For PCS carriers especially, the Commission viewed number portability as a necessary prerequisite to meaningful CMRS competition. The Commission concluded that "in the future, as

³ Id. at ¶ 159.

⁴ Id. at ¶ 166; see also Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 at ¶ 134 (1997).

CTIA has petitioned the Wireless Telecommunications Bureau for an extension of the implementation deadlines for wireless number portability pursuant to the Bureau's delegated authority. CTIA proposed that a nine month extension, consistent with the Report and Order, is necessary as a result of the technical obstacles to number portability implementation. CTIA noted that it is already apparent that the industry, despite its diligence, will not be capable of meeting the Commission's long term service provider number portability deadline. See Telephone Number Portability, CC Docket No. 95-116, *Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association* (filed November 24, 1997); *Wireless Telecommunications Bureau Seeks Comment on CTIA Petition for Waiver to Extend the Implementation Deadlines of Wireless Number Portability*, DA 97-2579 (released December 9, 1997).

CMRS providers compete to become a substitute for wireline service . . . CMRS customers will assign the same importance to number portability as wireline subscribers do today."⁵

CTIA does not necessarily dispute this future prediction. Rather, it seems clear that at present, to achieve the Commission's hopes for a competitive marketplace, all CMRS providers, and particularly PCS carriers, must first devote their finite resources toward meeting the current competitive requirements of the market: namely, network buildout and fostering price competition.⁶ Thus, CTIA requests that the Commission forbear from enforcing the June 30, 1999 implementation deadline for CMRS number portability at least until the five-year buildout period for PCS carriers has expired.⁷

II. THE COMMISSION SHOULD FORBEAR FROM ENFORCING ITS NUMBER PORTABILITY REQUIREMENTS ALLOWING CARRIERS TO DEVOTE THEIR RESOURCES TO OTHER, MORE PRESSING, COMPETITIVE DEMANDS.

In the intervening months since the issuance of the Report and Order, the CMRS market has continued its dynamic growth,

⁵ Report and Order at ¶ 145 (citing PCS PrimeCo Reply Comments at 1-2).

⁶ See Pat Blake, "Fire and Brimstone Can't Stop the Fury of Churn: Strong Customer Relations Should be a Priority for PCS Players," Telephony, November 17, 1997 ("While wireless competition is at a fevered pitch, PCS carriers have the additional concerns of paying for their recent system buildouts and working toward profitability. The result is a fierce battle to gain and retain elusive customers.")

⁷ This request does not affect the obligations of all CMRS providers to complete calls on the wireline network to ported telephone numbers.

while the factual circumstances which would arguably justify number portability have drastically changed. Specifically, PCS providers have devoted almost the entirety of their resources to aggressive construction of their networks. The market has demonstrated that the key to their competitive status is enhancing coverage areas, aggressive marketing, and reducing consumer telephone prices (to compete with cellular phones). By their vote authorizing CTIA to file this Petition, the CEO's of majority of these PCS carriers are seeking to devote as much capital as possible to network buildout and marketing by diverting their finite resources from their current obligation to deploy CMRS number portability on the current schedule. Based on their actual experience in the CMRS marketplace, these CEOs have concluded that CMRS number portability imposes more of a financial burden than a competitive benefit for their entry into the CMRS market. In other words, the immediate intended beneficiaries of number portability, PCS carriers, do not deem the near-term implementation of number portability to be as high a priority for marketplace competition as rapid buildout and price competition.⁸ Specifically, the capital requirements of implementing CMRS number portability will impede such buildout and reduce price competition without a commensurate impact on

⁸ See CTIA Ex Parte Filing (October 23, 1997) (In a presentation to the Commission, CTIA's PCS members demonstrated that they were interested in spending limited capital on areas where it would "have the greatest competitive impact.")

competition. The result may be to diminish rather than increase CMRS competition.

In fact, competition is already flourishing in the CMRS industry notwithstanding the current lack of implementation of CMRS number portability. In many of the largest markets there are at least two PCS operators providing service in competition with cellular carriers.⁹ All of these carriers are competing for existing subscribers, as well as expanding the total number of CMRS subscribers. Consumer prices have fallen in some markets by over thirty-three percent while the total number of wireless subscribers is expected to top fifty-three million in 1997.¹⁰

These are the types of factual statistics that the Commission had hoped to see when it began the PCS licensing

⁹ See Lynnette Luna, "Customers Confused on Price, Looking for 'Lifestyle' Matches," Radio Communications Report, October 13, 1997 ("The industry's projected intense growth is a result of as many as six mobile phone competitors in each U.S. market fighting vigorously for the general and business consumer with offers like \$75 for 1,500 minutes per month. Some rates have fallen so low that they are comparable to wireline and long-distance rates.")

¹⁰ See Judith Messina, "Firms Breathless Selling Wireless: Prices Drop Rapidly, Ad Budgets Boom as Phone Companies Battle for Users," Crain's New York Business, November 10, 1997 ("Since last fall, the cost of a minute of wireless telephone talk [in New York] has fallen as much as 50%, and other charges are tumbling as well. Wireless operators are on track to spend more than \$60 million this year on local advertising. They're also opening dozens of stores to sell equipment and services. The intense activity is expanding the market. Half of new subscribers have never purchased wireless services before."); see also Elizabeth V. Mooney, "Prices Down 6 Percent as PCS and Cellular Fight for Customers," Radio Communications Report, December 1, 1997 (noting that in Milwaukee, cellular carriers have reduced charges by as much as forty-three percent for some subscribers).

proceeding. These competitive factors can only be maintained, however, if carriers are able to direct available resources to reduce pricing margins and sustain their aggressive marketing strategies. Regulatory burdens that have not been proven to be warranted in the marketplace will serve mainly to dampen continued competition as carriers must divert their finite resources toward meeting the Commission's directives.

Given these circumstances, the Commission should exercise its forbearance authority to relieve CMRS carriers of their number portability obligations, at least until PCS carriers have completed their five-year buildout requirements. That is not to say that number portability neither has now nor will never have any competitive impact on CMRS market development. Rather, forbearance is warranted because CMRS carrier resources are better spent on improving coverage today.¹¹ Such a result does not entirely foreclose Commission revisitation of this issue in the future, but these obligations seem premature and costly given the vital, immediate, competitive need for improving coverage and aggressive marketing of CMRS services.

¹¹ Improved coverage is critical for competition both within the CMRS market and between CMRS providers and wireline carriers. Obviously, without expansive coverage areas, new entrants cannot attract consumers in either market who regularly use service outside of a carrier's serving area. Moreover, whereas cellular operators have had over a decade to deploy their networks, PCS carriers have been forced to rapidly build out system coverage to begin recovering license costs. See "Despite New Competition, Larger Carriers to Capture More of Fourfold Increase in Base for Wireless Voice Services," Mobile Phone News, October 27, 1997 ("PCS providers generally are at a disadvantage because of the huge cost of building out their networks and paying for spectrum. . . .") (citation omitted).

III. FORBEARANCE FROM THE NUMBER PORTABILITY OBLIGATIONS IS ENTIRELY APPROPRIATE UNDER A SECTION 10 FORBEARANCE ANALYSIS.

As explained below, forbearance from number portability requirements, as requested herein for CMRS carriers, is entirely consistent with the Communications Act of 1934, as amended.

Section 10 of the Communications Act obligates the Commission to:

forbear from applying any regulation or any provision of this Act to a . . . class of telecommunications carriers or telecommunications services, in any or some of . . . their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.¹²

In making the public interest assessment, the Commission must consider "whether forbearance . . . will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."¹³

With respect to the first and second prong of the forbearance test, because the CMRS market is operating in a competitive environment, with no one carrier exercising

¹² 47 U.S.C. 160(a).

¹³ 47 U.S.C. § 160(b).

substantial monopoly power,¹⁴ CMRS carriers are necessarily barred from engaging in unjust or unreasonable pricing or from "harming" consumers as a matter of course.¹⁵ In this instance, CMRS customers will best be served by all CMRS carriers concentrating their resources on improving market coverage and rapidly introducing additional facilities-based competition, than

¹⁴ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report, 12 FCC Rcd 11266, 11276 (1997) ("Our examination of the CMRS industry . . . indicates that competition is developing throughout the industry. Based on the Commission's licensing data and projections concerning the effects of other recent Commission actions, as many as four new competitors have been licensed in the past two years to provide CMRS throughout the Nation. . . . [T]he licensing of three broadband PCS carriers promises a greater degree of competition for existing cellular carriers as the broadband PCS carriers commerce [sic] service."); see also id. at 11312-13 ("By most accounts and projections, PCS is expected to increase considerably the degree of price competition and choice in the mobile telephony marketplace. . . . PCS carriers are projected to attract 50 percent of new wireless subscribers, and capture approximately 29 percent of the mobile market.") (citation omitted).

¹⁵ The Commission has consistently noted with respect to CMRS and other telecommunications services that traditional common carrier obligations (such as equal access and direct interconnection) should be imposed only on those firms exhibiting substantial market power, a circumstance not found in the CMRS market. See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Notice of Proposed Rule Making and Notice of Inquiry, 9 FCC Rcd 5408 (1994); Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rule Making, 10 FCC Rcd 10666 (1995) (declining to impose CMRS carrier to carrier interconnection obligations). Moreover, for number portability to work and to sustain nationwide roaming, it must be implemented by carriers in all markets, not just the top 100 MSAs. This means that rural and small business CMRS carriers must also devote their limited resources to meet the CMRS number portability obligations.

by having portable mobile phone numbers. In fact, if limited resources are diverted to the introduction of number portability -- absent demonstrated consumer demand -- consumers will be harmed by less network coverage, price competition will not be as aggressive as it otherwise might be, and all CMRS consumers will suffer because of reduced competition.¹⁶

Number portability is also not necessary to promote the public interest. Focusing resources on those elements which have already been proven to influence competition is in the public interest. Diverting resources away from them because of an anticipated pro-market effect by the Commission, does not benefit consumers. After the five year broadband PCS buildout period, number portability may eventually become a factor for competition in the CMRS marketplace. At this stage in the growth of the CMRS market, though, the public interest is better served by the concentration of limited resources to crucial infrastructure buildout as rapidly as possible. Such action will best ensure the continued development of a competitive CMRS telecommunications marketplace, and should ultimately position CMRS carriers to have sufficient infrastructure and other resources to provide local competition.

¹⁶ Available resources for meeting all of a carrier's obligations, both competitive and regulatory, are obviously limited. Simply stated, diversion of any portion of these resources to meet speculative regulatory objectives decreases the amount of money carriers can spend on known factors for competition. In the end, reduced competition attributable to regulatory burdens cannot be in the public interest.

IV. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission forbear from imposing number portability requirements upon CMRS providers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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